Equality Act 2010

1. Introduction


The Act streamlines\(^1\) the former nine major pieces of anti-discrimination laws and some 100 statutory instruments into one legislation. The Equality Act 2010 does not apply to Northern Ireland.

The Equality Act covers employment, facilities, goods and services and education.

2. Protected Characteristics

The Equality Act introduces new terminology/ concept of ‘protected characteristics’ which widen the scope of the existing six equality strands.

The protected characteristics cover:

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<td>Disability</td>
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<td>Gender reassignment(^2)</td>
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<td>Marriage and civil partnership</td>
<td>Sexual orientation</td>
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<td>Pregnancy and maternity</td>
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3. Equality Duties (Section 149 of the Equality Act 2010)

The Act places general and specific duties on public authorities.

3.1 General Duty

The Act places a new single duty\(^3\) (came into force in April 2011) on public authorities to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act
- Advance equality of opportunity between people from different groups
- Foster good relations

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1. Most of the existing anti-discrimination legislation is repealed. However, the Equality Act 2006 will remain in force (as amended by the Equality Act) so far as it relates to the constitution and operation of the Equality and Human Rights Commission and the Disability Discrimination Act 1995 in relation to Northern Ireland.

2. A trans person does not have to be under medical supervision to be protected from discrimination and harassment.

3. Applies to all protected characteristics other than marriage/ civil partnership.
3.2 **Specific Duty**

The purpose of the specific duties is to set a framework for delivery of the general duty. Proposed new specific duties for Scotland include:

- **Publication of Equality Outcomes** (covering period of 4 years) - based on evidence and involvement of equality groups and communities, and informed by the general duty. A public authority will have to report on progress made towards these outcomes.

- **Mainstreaming Equality** - duty to report on embedding equality across corporate systems, policies and practices

- **Impact Assessment** - consider the impact on equality of new policies and practices, including changes to, or redesign of, existing policies and practices; which is informed by evidence (comes into force from April 2011)

- **Publication of Employment Information** - data on the gender pay gap, the proportion of staff from ethnic minority communities and the distribution of disabled employees throughout an organisation’s structure

- **Publication Duty** - simplification of reporting, including a requirement to use existing public performance reporting systems

- **Procurement** - when relevant and proportionate institutions should have due regard to whether the award criteria and the contract conditions for goods, works or services should include equality considerations

- **A duty on Scottish Ministers** to set national equality priorities and report on progress, including the placing of additional specific duties on public authorities to assist the delivery of the general duty⁴.

4. **Types of discrimination**

The Equality Act defines the following:

4.1 **Direct discrimination** occurs if an employer discriminates against an employee because of a protected characteristic, whether or not the employee possesses that characteristic (except in the case of marital status or civil partnership).

The new definition of direct discrimination extends protection based on *association and perception*.

- **Discrimination based on association**⁵ (Applies to age, disability, gender reassignment, race, religion or belief, sex and sexual orientation)
  It will be unlawful to discriminate against employees because of their connection with someone else who possesses a protected characteristic such as an employer treats a white employee less favourably because she has a black boyfriend.

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⁴ The specific focus of the Scottish Ministers 2013 proposals is to help improve the quality of equality outcomes, the robustness and use of employee information and the wider equality evidence base (p5). [http://www.scotland.gov.uk/Resource/0044/00440910.pdf](http://www.scotland.gov.uk/Resource/0044/00440910.pdf)

⁵ Attridge Law v Coleman: Coleman claimed she was forced to quit her job at Attridge Law after she requested time off to look after her four-year-old disabled son. The European Court of Justice ruled that able-bodied people can be covered by the Disability Discrimination Act. Direct discrimination or harassment based on association or perception is unlawful.
• **Discrimination based on perception** (applies to age, disability, gender reassignment, race, religion or belief, sex and sexual orientation)
  It will be unlawful to discriminate against employees because they are mistakenly perceived to possess a protected characteristic for example; an employee is treated less favourably because his colleagues think he is gay when in fact he is not.

4.2 **Indirect discrimination** makes it unlawful to apply a provision, criterion or practice which is discriminatory in relation to one of the protected characteristics (but not to pregnancy and maternity). This the first occasion where scope of indirect discrimination is applied to disability and gender reassignment.

4.3 **Harassment** - employees are able to complain of harassment even if it is not directed at them, if they can demonstrate that it creates an offensive environment for them.⁶/⁷

4.4 **Victimisation** - this definition broadly reflects the existing provisions. It is unlawful to subject someone to a detriment because they have brought proceedings under the Equality Act, given evidence or information in connection with proceedings under the Equality Act, done any other thing for the purposes of or in connection with the Equality Act or alleged that the employer or another person has contravened the Equality Act.

4.5 **Detriment arising from disability** - this replaces the concept of “disability-related discrimination”. It occurs when employers treat employees in a detrimental way because of something that is a consequence of their disability.

A typical example would be dismissing employees with poor attendance records when their absences were caused by a disability. This would be unlawful unless dismissal could be justified as a “proportionate means of achieving a legitimate aim” or the employer could not reasonably have been expected to know of the disability.

4.5.1 **The duty to make reasonable adjustments**
Employers, education and service providers have a duty to make reasonable adjustments to ensure disabled people do not face ‘substantial disadvantage.’ This could be in relation to a policy, criterion or practice (for example selection criteria for recruitment) or physical features (for example access to lecture rooms). The duty to make reasonable adjustments remains anticipatory for education providers and providers of service and public functions.

This may involve treating disabled people 'more favourably' than non-disabled people⁸.

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⁶ Morgan v Halls of Gloucester UKEAT/0573/10/DA. Mr Morgan, a black delivery driver, resigned and claimed constructive dismissal as his employer failed to prevent racist abuse of a colleague. The Employment tribunal found that Mr Morgan’s own dignity had been violated and awarded him £27k.

⁷ Provisions in the Equality Act that make employers liable for harassment of employees by third parties, such as customers, clients or suppliers, was repealed as of 1 October 2013.

⁸ Extract on making reasonable adjustments taken from P.3 Skill National Bureau for Students with Disabilities, Equality Act 2010 and Disability, London October 2010
5. New and Extended Requirements

5.1 Equal pay

Under existing law, employees who claim they are paid less because of their sex must identify a “comparator” of the opposite sex who is in the same employment (which usually means employed by the same employer), doing equal work but paid more. The legislation retains the need for a comparator, with two changes.

The Act allows:

- comparison with a successor to a post; and

- “hypothetical comparators”, where there is direct sex discrimination in contractual pay but no actual comparator exists.

5.2 Pay transparency

The Act prevents employers from taking action against employees who discuss their pay with a view to finding out if there has been any unlawful discrimination.

5.3 Positive action

The Act extends the scope for employers to take “positive action” as a proportionate means of enabling or encouraging people with a protected characteristic to overcome or minimise disadvantage, or participate in activity where they are underrepresented.

This includes allowing employers to recruit or promote employees because of their protected characteristic if they are “as qualified as” other candidates, provided this is done on a case-by-case basis rather than as a matter of policy.

5.4 Pre-employment health questions

An additional feature in the Act is a ban on asking job candidates about their health before offering them work.

Some questions will still be permitted: for example, those necessary to establish whether a candidate can undergo an assessment for the job such as a test or an interview; carry out an intrinsic function of the job itself; or for monitoring diversity. However, untargeted health questionnaires, forming part of the application process, are no longer allowed.

Once a person has passed the interview and has been offered a job then it is permitted for Employers to ask appropriate health-related questions.

5.5 Recommendations by Tribunals

A tribunal will be able to make a recommendation benefiting the wider workforce, even if it is no longer relevant for the individual claimant - probably because the individual has left the employer.
6. Codes of Practice

The Equality Act requires the Equality and Human Rights Commission (EHRC) to produce statutory and non-statutory guidance on the legislation.

6.1 Statutory Codes

There are three legally binding Codes of Practice, including:

- Code of Practice on Equal Pay
- Code of Practice on Employment
- Code of Practice on Services, Public Functions and Associations

6.2 Technical Guidance

This form of guidance is not statutory but can be used as evidence in legal proceedings:

- Technical Guidance on the Public Sector Equality Duty Scotland (PDF)
- Technical Guidance on Further and Higher Education (PDF)

6.2 Non-Statutory Codes

The Equality and Human Rights Commission has produced non-statutory Codes of Practice aimed at people relying on the law to protect their rights and the other at those who have responsibilities under the law. Whilst these Codes are not legally binding they may be taken into account by a tribunal. The non-statutory guidance includes:

- Non-statutory guidance on employment
  - What the Equality Act 2010 means for you as an employer
  - The Equality Act 2010 guidance for employees

- Non-statutory guidance for Scottish public authorities includes:
  - Essential guide to the Public Sector Equality Duty
  - Technical guidance on the Public Sector Equality Duty: Scotland
  - Equality outcomes and the Public Sector Equality Duty
  - Equality outcomes self-assessment toolkit
  - Evidence and the Public Sector Equality Duty: a guide for public authorities
  - Involvement and the Public Sector Equality Duty
  - Assessing impact and the Public Sector Equality Duty
  - Mainstreaming the equality duty: a guide for public authorities
  - Making fair financial decisions: a guide for decision makers in Scotland
  - Procurement guidance
  - Employee information and the Public Sector Equality Duty
  - Guidance for Councillors and Elected Members
  - Board diversity and the Public Sector Equality Duty
  - Briefing on reporting requirements for the Scottish Public Sector Equality Duty in 2015
7. Implications of the Equality Act 2010 for the University of Strathclyde

The executive summary below highlights the implications of the Equality Act for the University.

The University’s Equality and Diversity Office will keep abreast of legislative (codes of practice) developments and will inform the University community accordingly.

Implications for the University of Strathclyde

**Executive Summary**

1. Background

The Equality Act 2010 came into force on 1 October 2010 and harmonises former anti-discrimination legislation and statutory instruments. The Act strengthens the law on equality and introduces several new rights and remedies. The Act covers employment matters, education and the provision of goods and services and public procurement.

The Equality Act introduces the new terminology of *protected characteristics*: age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The following is an outline of implications of the Act for the University of Strathclyde.

2. Court responsibility

The University Governing body (the Court) is legally responsible for ensuring the University is compliant with the Equality Act 2010.

3. Institutional Responsibility

- Implement the 'equality duties' (general and specific)
- Ensure University policies and practices are consistent with the Act
- Develop Equality Outcomes for 2013-2017
- Inform staff, students (current and former) and visitors including contractors on the University equality policy and Equality Outcomes for 2013-2017
- Monitor procurement processes
- Conduct equality impact assessments on current, revised or new policy and practices to address any inequality or potential discrimination
- Provide information in accessible format

4. Employment relevant responsibility

Requirements of the Equality Act 2010 which are applied and practiced at the University include:

- Reviewing (and thereafter periodically) HR policies, job contracts and practices to ensure compliance with the Act
- Revising job application forms to omit health and disability related questions; unless justified, such as employers may ask candidates to establish whether any reasonable adjustment is required during the selection process
- Having no pay secrecy clauses
- Conducting equal pay review and publishing gender pay gap data
- Publishing equality trends for employment of men, women, minority ethnic people and people with disabilities
Providing staff development awareness opportunities
Students advised of their rights and responsibilities via course handbooks
Range of diversity events that enable engagement, dialogue and promote understanding and respect between people from all protected characteristics.

Elements of the Act relating to employment matters that require consideration include:

- Applying positive action to address patterns of under-representation (in relation to training and jobs)
- Updating the staff and students equality monitoring process to capture data for all protected characteristics (introduced in September 2013)
- Awareness raising for all students

5. Challenges

- Resource implications at time of financial constraint
- Understanding and engaging with the Equality Impact Assessments process
- Greater buy-in and engagement on equality matters by all members of the University community
- Taking pro-active measures to prevent harassment, including better monitoring of (incidents) information
- Devising a manageable monitoring process for procurement

The University’s Equality and Diversity office will keep abreast of legislative (codes of practice) developments and will inform the University community accordingly.

References

Consultation on Public Sector Equality Duty Draft Regulations and Order Sept 2010
Skill National Bureau for Students with Disabilities, Equality Act 2010 and Disability, London October 2010
The Equality Act 2010, Chapter 15, HMSO, London

http://www.equalities.gov.uk/
http://www.mills-reeve.com/files/Publication/4a13b29f-82bc-4b17-acba-38165ae1744b/Presentation/PublicationAttachment/2aea4b14-3153-4f17-a045-
http://www.stammeringlaw.org.uk/changes/sea.htm

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## Appendix 1

### Equality Act 2010

**What’s new & what’s changed: at a glance**

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<tr>
<th>Key</th>
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### Direct discrimination
Someone is treated less favourably than another person because of a protected characteristic (PC)

### Associative discrimination
Direct discrimination against someone because they associate with another person who possesses a PC

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### Discrimination by perception
Direct discrimination against someone because the others think they possess a particular PC

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### Indirect discrimination
Can occur when you have a rule or policy that applies to everyone but disadvantages a particular PC

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### Harassment
Employees can now complain of behaviour they find offensive even if it is not directed at them

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### Victimisation
Someone is treated badly because they have made/ supported a complaint or grievance under the Act

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